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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DAY PITNEY LLP
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EXAMINER

MCKINLEY, CHRISTOPHER BRIAN

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/802,416

Applicant(s)

RAMIREZ ET AL.

Examiner

Christopher B. McKinley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6-10, 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al. (5,094,355) in view of Vadney (5,947,321). Clarke et al. discloses the invention substantially including a two compartment container (fig. 2, 10) comprising a lid hingedly connected (50) to the base, said base having a partition (24) substantially transverse to said hinge dividing the base portion into first and second compartments extending said hinge to said locking flap (portion of partition near said hinge), said lid having a like partition (42) extending from said hinge toward a face of said lid portion (portion of partition near said hinge) and aligned with the base partition wherein the two partitions abut each other when the container is in the closed position (column 5, line 59) and the lid partition is separated from the face of the lid by a gap. Clark et al. has a locking mechanism with an opposite orientation wherein the lid contains the locking tab and the base has the corresponding holes. Moreover, Vadney teaches a similar container showing the reversal of the pads art equivalent in which the base portion has a locking tab (fig. 3) opposite the hinge for the purpose of maintaining the container in a closed position (column 3, line 57). Therefore it would have been

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obvious to one having ordinary skill in the art at the time of invention to have modified Clarke et al. with a locking mechanism such that the base portion has a locking tab opposite the hinge in order to maintain the container in a closed position.

Regarding claim 2, Vadney teaches two nubs (58) on the locking flap and at least one hole through the lid portion, aligned with each other and engage each other when the container is in the closed position.

Regarding claims 6 and 7, Clarke et al. discloses a compartment containing a plurality of channels (22a) and a perimeter channel around the plurality of channels (16).

Regarding claims 8-10, Clarke et al. discloses the base portion having a stepped edge (fig. 2), separated from its respective portion by a channel, exclusive from the hinge and locking flap, and lid portion having a corresponding stepped edge of the same shape as the stepped edge on the base, wherein one fits into the other while in the closed position (fig. 4).

Regarding claim 114, Vadney teaches a locking flap substantially as high as said face of the lid portion (fig. 3).

Regarding claim 15, Vadney teaches the claimed invention except for the locking flap being thicker than said face of said lid portion. It would have been an obvious matter of design choice to thicken the locking flap in order to enhance stability, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Regarding claim 16, Vadney teaches the top surface of the lid having a raised portion (fig. 3) and the bottom surface of the base having a corresponding indented area for stacking purposes.

Regarding claim 18, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Also, Clarke et al. discloses a container being made of plastic sheet material, foamed, wherein the plastic sheet material is foamed polystyrene (col. 1, line 56 – col. 2, line 21).

3. Claims 11-13, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al. in view of Vadney as applied to claims 1, 2, 6-10, 14-16 and 18 above, and further in view of Nordland et al. (2005/0000966).

Regarding claim 11, Clarke et al. in view of Vadney disclose the invention substantially, as described in par. 2, including a lid portion having regions over both the first and second compartments but excluding vents over each region enabling both heat and steam to escape. However, Nordland et al. teaches vents on the lid portion (fig. 1, 30) for the purpose of venting steam, pressure or heat caused by the contents within the container (par. 24). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Clarke et al. in view of Vadney with vents on the lid portion in order to vent steam, pressure or heat caused by contents within the container.

Regarding claims 12 and 13, Nordland et al. teaches a vent having a hinge, able to open to any desired degree (figs. 2 & 3) and the vent being in a recessed area (fig. 1).

Regarding claims 20 and 23, Norland et al. teaches the container being made of unfoamed plastic sheet polystyrene material (par. 38).

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al. in view of Vadney as applied to claims 1, 2, 6-10, 14-16, and 18 above, and further in view of Eicholtz (3,595,425). Clarke et al. in view of Vadney disclose the invention substantially excluding a channel on the base portion of the container to allow heat and steam to escape from the container while in a stacked position. However, Eicholtz teaches a channel on the base portion of the container to allow heat and steam to escape from the container while in a stacked position (fig. 4) for the purpose of releasing moisture from within the container (col. 1, line 40). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Clarke et al. in view of Vadney with a channel on the base portion of the container to allow heat and steam to escape from the container. Moreover, Eicholtz teaches the invention except for the channel being on the base (fig. 5 of Applicant's drawings) as opposed to the lid, see Eicholtz, figs. 3 & 4. It would have been an obvious matter of design choice to have formed the channel on the base as opposed to the lid since it appears that the invention would perform equally as well.

Allowable Subject Matter

5. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 1/8/2007 have been fully considered but they are not persuasive. It is acknowledge that the Applicant contends there is no motivation to combine however, all benefits of the claimed invention need not be explicitly disclosed in reference to render claim unpatentable under 35 USC 103. See *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990). Since the claimed subject matter would have been obvious from the references, it is immaterial that the references do not state the problem or advantage ascribed by applicant. See *In re Wiseman*, 201 USPQ 658.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.


8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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